

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

A&L PRECISION PRODUCTS)	
Plaintiff,)	Civil Action No. 07-0345
)	Judge David S. Cercone
vs.)	Magistrate Judge Lisa P. Lenihan
)	
ALLOY BELLOWS & PRECISION)	
WELDING, INC.)	
Defendant and Counterclaim Plaintiff)	

MEMORANDUM ORDER

Plaintiffs' Complaint was received by the Clerk of Court and was subsequently referred to United States Magistrate Judge Lisa Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The Magistrate Judge's August 6, 2009 Report and Recommendation recommended that the Motions for Partial Summary Judgment filed by Plaintiff and by Defendant each be denied.¹

¹ More specifically, the Report recommended that A&L's Motion for Partial Summary Judgment be (1) denied as to claims for revocation of acceptance under the Uniform Commercial Code (the "UCC"), as (a) there are material fact questions as to A&L's representations and repeated attempts to repair the hydroformer, and (b) revocation would remain an available remedy under the fraudulent inducement claim, which will proceed; (2) denied as to claims for fraudulent inducement, as (a) there are material fact questions as to misrepresentation/omission and concealment tolling the statute of limitations, and (b) the Court need not decide at this time whether those representations regarding contract performance are, under Pennsylvania law, subsumed into Alloy Bellow's contract claim, which will proceed, and barred in tort by the gist

Objections were timely filed by both parties.


After review of the pleadings in the case, together with the Report and Recommendation,² and the Objections thereto, the following Order is entered:

AND NOW, this 14th day of September, 2009:

IT IS HEREBY ORDERED that Plaintiff's Motion for Partial Summary Judgment is denied; and

IT IS HEREBY ORDERED that Defendant's Motion for Partial Summary Judgment is denied.

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Lenihan is adopted as the Opinion of the Court.



Judge David S. Cercone
United States District Judge

of the action doctrine; (3) denied as to claims for breach of a duty of good faith and fair dealing, as (a) there are material fact questions and (b) the Court need not decide at this time whether such claim should proceed independently under Pennsylvania law or whether the duty of good faith serves to inform the breach of contract claim; (4) denied as to claims for punitive damages, as there are material fact questions regarding A&L's alleged bribery of Alloy Bellow's employee and other outrageous commercial misconduct; and (5) denied as to claims for misappropriation of intellectual property as there are material fact questions regarding A&L's alleged (a) procurement of a breach of the duty of loyalty owed to Alloy Bellows by its employees, and (b) profit from the misappropriation of, e.g., proprietary information and/or expertise gained in the course and scope of employment with Alloy Bellows. It further recommended that Alloy Bellow's Motion for Partial Summary Judgment be denied because A&L has effectively denied facts material to each of its counterclaims, creating triable questions.

² The Court notes that the Magistrate Judge heard oral argument on the Motions in April, 2009.